

Senate Bill 20

Sponsored by Senator WALKER, Representative HOLVEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Restricts spraying of pesticides near school property and roads servicing school property. Requires filing of written plan with State Department of Agriculture or State Forester before applying pesticide. Creates civil penalties for violation, not to exceed \$2,500. Allows department and State Forester to assess fees for filing written plans. Continuously appropriates percentage of fee moneys to Department of Environmental Quality for monitoring air and water quality in pesticide spray areas.

Applies to pesticide applications on or after January 1, 2008.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to pesticide application; creating new provisions; amending ORS 527.670 and 561.144; ap-
3 propriating money; and declaring an emergency.

4 Whereas in 1992 the National Parent Teacher Association and the National Education Associ-
5 ation called for reduced exposures to pesticides in schools; and

6 Whereas childhood cancer is continuing to increase at an alarming rate of one percent per year;
7 and

8 Whereas the overall incidence of childhood cancer increased 10 percent between 1974 and 1991,
9 making cancer the leading cause of childhood death from disease; and

10 Whereas approximately 325,000 Oregonians have asthma, 64,000 of them children; and

11 Whereas asthma is the nation's leading cause of absenteeism among school children with
12 chronic illnesses; and

13 Whereas the incidence of asthma is on the rise; and

14 Whereas children are more susceptible than adults to hazardous impacts from pesticides; and

15 Whereas numerous scientific studies have linked both cancer and asthma to pesticide exposure;
16 and

17 Whereas children deserve to be in a safe and healthy environment while they are at school or
18 on their way to or from school; and

19 Whereas school officials deserve to be notified in advance of any pesticide use near a school;
20 and

21 Whereas parents and guardians desire and deserve to have information about pesticide use near
22 their children's schools; now, therefore,

23 **Be It Enacted by the People of the State of Oregon:**

24 **SECTION 1. Sections 2 to 4 of this 2007 Act are added to and made a part of ORS chapter**
25 **634.**

26 **SECTION 2. As used in sections 2 to 4 of this 2007 Act:**

27 (1) "Academic year" means the period from September 1 through June 15.

28 (2) "School" means a public educational institution offering instruction at any levels from

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 prekindergarten through grade 12 or the equivalent, or any part of that instruction.

2 (3) "School property" means school buildings and appurtenant structures, parking lots,
3 lawns, playgrounds, sports fields and other school-related facilities and areas.

4 **SECTION 3.** (1) A pesticide applicator, pesticide trainee, public applicator or public
5 trainee may not:

6 (a) Apply a pesticide by aerial spraying or other power-driven pesticide application
7 equipment within one mile of school property during the academic year.

8 (b) Apply a pesticide by aerial spraying or other power-driven pesticide application
9 equipment within one mile of a road that services a school property, during the academic
10 year between 7 and 9 a.m. or between 2:30 and 4 p.m.

11 (c) Apply a pesticide by hand or backpack pesticide application equipment within one-half
12 mile of school property during the academic year.

13 (d) Apply a pesticide by hand or backpack pesticide application equipment within one-half
14 mile of a road that services a school property, during the academic year between 7 and 9 a.m.
15 or between 2:30 and 4 p.m.

16 (2) A pesticide applicator, pesticide trainee, public applicator or public trainee may not
17 apply pesticides within five miles of a school property unless:

18 (a) If the application site is forestland, the operator, timber owner or landowner has filed
19 a written plan for the application under ORS 527.670; or

20 (b) If the application site is not forestland, the landowner or other possessor of the
21 property has filed a written plan for the application under section 4 of this 2007 Act.

22 (3) The Director of Agriculture may grant exemptions from subsections (1) and (2) of this
23 section to allow spraying for vector control purposes in a quarantine area declared under
24 ORS 561.510 to 561.590.

25 (4) The Attorney General, a person or a school district may bring an action to enforce
26 this section. The Attorney General, a district attorney or a city attorney may bring an action
27 for injunctive relief to prevent a violation of this section.

28 **SECTION 4.** (1) The State Department of Agriculture shall adopt rules to regulate the
29 commercial application of pesticides within five miles of a school property.

30 (2) The five-mile distance described in subsection (1) of this section refers to the distance
31 from the school property only, regardless of any adjacent protected areas.

32 (3) Before allowing a pesticide applicator, pesticide trainee, public applicator or public
33 trainee to commence pesticide application, a landowner or other lawful possessor of property
34 shall notify the Director of Agriculture. The notification shall be on forms provided by the
35 director and shall include:

36 (a) The name of the person for whom the pesticide is to be applied.

37 (b) The approximate location of the land or property on which the pesticide is to be ap-
38 plied.

39 (c) The date and approximate time of application of the pesticide.

40 (d) The supplier of the pesticide.

41 (e) The trade name and the strength of the pesticide.

42 (f) The amount or concentration of the pesticide, stated as pounds or gallons of active
43 ingredient per acre or as approximate concentration per 100 gallons.

44 (g) The specific property, crop or crops to which the pesticide is to be applied.

45 (h) The summary information of equipment, device or apparatus to be used and, if the

1 pesticide is to be applied by aircraft, the Federal Aviation Administration number of the
2 aircraft.

3 (i) The name of the pesticide operator or, if the pesticide application will be by a public
4 applicator or public trainee, the employer of the public applicator or public trainee.

5 (j) A detailed written plan for ensuring that the pesticide will not drift into areas where
6 the planned pesticide application is prohibited by section 3 of this 2007 Act.

7 (k) A map with identifiable landmarks that shows the boundary between the pesticide
8 application area and the areas where the planned pesticide application is prohibited by sec-
9 tion 3 of this 2007 Act.

10 (4) The landowner or possessor filing the written plan shall notify the director of any
11 subsequent change in the submitted information.

12 (5) Within three working days of receipt of a written plan filed under this section, the
13 director shall send a copy of the notice and the written plan to each school district having
14 a school property within five miles of the proposed pesticide application. The director may
15 also send a copy of the written plan to anyone residing within those school districts who has
16 requested to be notified of pesticide application plans.

17 (6) Persons may submit written comments pertaining to the operation to the director
18 within 14 calendar days after the date the written plan was filed with the director.

19 (7) The director may review the written plan and any comments received and may make
20 recommendations for the purpose of ensuring that pesticides will not be applied in violation
21 of section 3 of this 2007 Act or the rules adopted by the department under subsection (1) of
22 this section. The director shall make any comments and recommendations not earlier than
23 14 calendar days and not later than 21 calendar days after the written plan is submitted. The
24 pesticide application may be made at any time after the director makes comments and rec-
25 ommendations or, the director makes no comments or recommendations, 21 days after the
26 written plan is submitted. The department or the director may not adopt rules requiring
27 approval by the department or the director as a prerequisite to a pesticide application de-
28 scribed in this section.

29 (8)(a) The director may establish a fee for sending copies of written plans to persons re-
30 questing notice, not to exceed the actual and reasonable costs.

31 (b) The director may assess a fee for the filing of a written plan under this section.
32 Notwithstanding ORS 561.144, 10 percent of any fee imposed by the director under this par-
33 agraph shall be deposited into the General Fund and credited to an account of the Depart-
34 ment of Environmental Quality. Amounts credited to an account of the Department of
35 Environmental Quality under this section are continuously appropriated to the Department
36 of Environmental Quality for the purpose of monitoring air and water quality in pesticide
37 spray areas.

38 (9) A person who fails to submit the information described in this section, or who violates
39 a State Department of Agriculture rule adopted under subsection (1) of this section, is sub-
40 ject to a civil penalty in an amount established by the director by rule, not to exceed \$2,500.

41 **SECTION 5.** Section 6 of this 2007 Act is added to and made a part of ORS 527.610 to
42 527.770.

43 **SECTION 6.** (1) In addition to any content required in ORS 527.670, if a written plan is
44 for the application of pesticides with five miles of school property as defined in section 2 of
45 this 2007 Act, the application shall contain the following:

- 1 **(a) The name of the person for whom the pesticide is to be applied.**
- 2 **(b) The approximate location of the land or property on which the pesticide is to be ap-**
- 3 **plied.**
- 4 **(c) The date and approximate time of application of the pesticide.**
- 5 **(d) The supplier of the pesticide.**
- 6 **(e) The trade name and the strength of the pesticide.**
- 7 **(f) The amount or concentration of the pesticide, stated as pounds or gallons of active**
- 8 **ingredient per acre or as approximate concentration per 100 gallons.**
- 9 **(g) The specific property, crop or crops to which the pesticide is to be applied.**
- 10 **(h) The summary information of equipment, device or apparatus to be used and, if the**
- 11 **pesticide is to be applied by aircraft, the Federal Aviation Administration number of the**
- 12 **aircraft.**
- 13 **(i) The name of the pesticide operator or, if the pesticide application will be by a public**
- 14 **applicator or public trainee, the employer of the public applicator or public trainee.**
- 15 **(j) A detailed plan for ensuring that the pesticide will not drift into areas where the**
- 16 **planned pesticide application is prohibited by section 3 of this 2007 Act.**
- 17 **(k) A map with identifiable landmarks that shows the boundary between the pesticide**
- 18 **application area and the areas where the planned pesticide application is prohibited by sec-**
- 19 **tion 3 of this 2007 Act.**
- 20 **(2) Notwithstanding ORS 527.685, a person who fails to submit the information described**
- 21 **in this section is subject to a civil penalty in an amount established by the State Forester**
- 22 **by rule, not to exceed \$2,500.**
- 23 **(3) The State Forester may grant exemptions from ORS 527.670 (3)(c) and this section to**
- 24 **allow spraying as part of an integrated pest management process under ORS 527.310 to**
- 25 **527.370.**
- 26 **SECTION 7.** ORS 527.670 is amended to read:
 - 27 527.670. (1) The State Board of Forestry shall designate the types of operations for which notice
 - 28 shall be required under this section.
 - 29 (2) The board shall determine by rule what types of operations require a written plan.
 - 30 (3) The board’s determination under subsection (2) of this section shall require a written plan
 - 31 for operations:
 - 32 (a) Within one hundred feet of a stream determined by the State Forester to be used by fish or
 - 33 for domestic use, unless the board, by rule, provides that a written plan is not required because the
 - 34 proposed operation will be conducted according to a general vegetation retention prescription de-
 - 35 scribed in administrative rule; [or]
 - 36 (b) Within three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a)[.];
 - 37 **or**
 - 38 (c) **Within five miles of school property as defined in section 2 of this 2007 Act.**
 - 39 (4) The distances set forth in subsection (3)[(a) and (b)] of this section are solely for the purpose
 - 40 of defining an area within which a hearing may be requested under ORS 527.700 and not the area
 - 41 to be protected by the board’s rules adopted pursuant to ORS 527.710 (3)(c).
 - 42 (5) For the purpose of determining the distances set forth in subsection (3)[(a) and (b)] of this
 - 43 section “site” means the specific resource site and not any additional buffer area.
 - 44 (6) An operator, timber owner or landowner, before commencing an operation, shall notify the
 - 45 State Forester. The notification shall be on forms provided by the State Forester and shall include

1 the name and address of the operator, timber owner and landowner, the legal description of the
2 operating area, and any other information considered by the State Forester to be necessary for the
3 administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon re-
4 ceipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator,
5 timber owner or landowner did not submit the notification. The State Forester shall send a copy of
6 notices involving chemical applications to persons within 10 miles of the chemical application who
7 hold downstream surface water rights pursuant to ORS chapter 537, if such a person has requested
8 that notification in writing. The board shall adopt rules specifying the information to be contained
9 in the notice. All information filed with the State Forester pertaining to chemical applications shall
10 be public record.

11 (7) An operator, timber owner or landowner, whichever filed the original notification, shall no-
12 tify the State Forester of any subsequent change in the information contained in the notification.

13 (8) Within three working days of receipt of a notice or a written plan filed under subsection (6)
14 or (7) of this section, the State Forester shall send a copy of the notice or written plan to any person
15 who requested of the State Forester in writing that the person be sent copies of notice and written
16 plan and who has paid any applicable fee established by the State Forester for such service. The
17 State Forester may establish a fee for sending copies of notices and written plans under this sub-
18 section not to exceed the actual and reasonable costs. In addition, the State Forester shall send a
19 copy of the notification to the Department of Revenue and the county assessor for the county in
20 which the operation is located, at times and in a manner determined through written cooperative
21 agreement by the parties involved.

22 (9) Persons may submit written comments pertaining to the operation to the State Forester
23 within 14 calendar days of the date the notice or written plan was filed with the State Forester
24 under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the
25 State Forester may waive any waiting period for operations not requiring a written plan under
26 subsection (3) of this section, except those operations involving aerial application of chemicals.

27 (10) If an operator, timber owner or landowner is required to submit a written plan of operations
28 to the State Forester under subsection (3) of this section:

29 (a) The State Forester shall review a written plan and may provide comments to the person who
30 submitted the written plan;

31 (b) The State Forester may not provide any comments concerning the written plan earlier than
32 14 calendar days following the date that the written plan was filed with the State Forester nor later
33 than 21 calendar days following the date that the written plan was filed; and

34 (c) Provided that notice has been provided as required by subsection (6) of this section, the op-
35 eration may commence on the date that the State Forester provides comments or, if no comments
36 are provided within the time period established in paragraph (b) of this subsection, at any time after
37 21 calendar days following the date that the written plan was filed.

38 (11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the
39 person who submitted the written plan are for the sole purpose of providing advice to the operator,
40 timber owner or landowner regarding whether the operation described in the written plan is likely
41 to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the
42 State Forester or the board do not constitute an approval of the written plan or operation.

43 (b) If the State Forester or the board does not comment on a written plan, the failure to com-
44 ment does not mean that an operation carried out in conformance with the written plan complies
45 with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute

1 a rejection of the written plan or operation.

2 (c) In the event that the State Forester or board determines that an enforcement action may be
 3 appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or
 4 rules adopted thereunder, the State Forester or board shall consider, but are not bound by, com-
 5 ments that the State Forester provided under this section or comments that the board provided un-
 6 der ORS 527.700.

7 (12) When the operation is required to have a written plan under subsection (3) of this section
 8 and comments have been timely filed under subsection (9) of this section pertaining to the operation
 9 requiring a written plan, the State Forester shall:

10 (a) Send a copy of the State Forester’s review and comments, if any, to persons who submitted
 11 timely written comments under subsection (9) of this section pertaining to the operation; and

12 (b) Send to the operator, timber owner and landowner a copy of all timely comments submitted
 13 under subsection (9) of this section.

14 **(13) The State Forester may assess a fee for the filing of a written plan under subsection**
 15 **(3)(c) of this section. Notwithstanding ORS 526.060, 10 percent of any fee imposed by the**
 16 **State Forester under this subsection shall be deposited into the General Fund and credited**
 17 **to an account of the Department of Environmental Quality. Amounts credited to an account**
 18 **of the department under this subsection are continuously appropriated to the department for**
 19 **the purpose of monitoring air and water quality in pesticide spray areas.**

20 **SECTION 8.** ORS 561.144 is amended to read:

21 561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund which
 22 shall be a trust fund separate and distinct from the General Fund. The State Department of Agri-
 23 culture shall deposit all license and service fees paid to it under the provisions of the statutes
 24 identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State
 25 Treasurer is the custodian of this trust fund which shall be deposited by the treasurer in such de-
 26 positories as are authorized to receive deposits of the General Fund, and which may be invested by
 27 the treasurer in the same manner as authorized by ORS 293.701 to 293.820.

28 (2) Interest received on deposits credited to the Department of Agriculture Service Fund shall
 29 accrue to and become a part of the Department of Agriculture Service Fund.

30 (3) The license and service fees subject to this section are those described in ORS 561.400,
 31 570.710, 571.057, 571.063, 571.145, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580,
 32 586.650, 596.030, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706,
 33 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240,
 34 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362,
 35 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212
 36 and 635.030 **and section 4 of this 2007 Act.**

37 **SECTION 9.** Sections 2, 3, 4 and 6 of this 2007 Act and the amendments to ORS 527.670
 38 and 561.144 by sections 7 and 8 of this 2007 Act apply to pesticide applications made on or
 39 after January 1, 2008.

40 **SECTION 10.** This 2007 Act being necessary for the immediate preservation of the public
 41 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
 42 on its passage.